From model to practice: Researching and representing Rwanda's 'modernized' *gacaca* courts

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From model to practice: Researching and representing Rwanda's 'modernized' *gacaca* courts

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Abstract

The publications on the modernized *gacaca* courts dealing with the legacy of the Rwandan genocide are abundant and they often seem to be rife with diverging analysis and conclusions. This article argues that the seeming lack of consensus does not signal the impossibility of adequately representing the *gacaca* courts. This article does not dwell on the crisis of representation. Instead, an effort is made to provide clarity in a disorder of representations in the context of a political anthropology that works across localized, national and international networks and dynamics. The process of establishing a representation of the *gacaca* courts is scrutinized. Numerical legibility, magic syllogisms and performative speech lie at the heart of the process that generates an ideological representation of the modern *gacaca* courts upheld by the Rwandan regime and its agents. In addition, a first generation of academic studies on *gacaca* is characterized by magical legalism: they depict a theoretical model that is primarily based on law or law talk. A second generation of *gacaca* studies mainly adopt a bottom-up perspective that is often ethnographically informed. A focus on actual *gacaca* practice not only constitutes an alternative research approach but also unmasks and destabilizes the process of 'making models'. But dangers exist regarding these alternative types of representational strategies as well, especially due to uncritical blurring of reigning models and actual practice. The analysis suggests new avenues of investigation and reflection in the fields of the anthropology of transitional justice, international relations and peacebuilding.

Keywords

Gacaca courts, ideology, knowledge, political anthropology, representation, Rwanda, transitional justice

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The Rwandan genocide was the violent apex of a country history marked by sporadic eruptions of ethnic violence as a consequence of the struggle over power (and wealth) in the course of time, a struggle grafted onto the Hutu–Tutsi ethnic bipolarity that marks the Rwandan socio-political landscape. The Hutu are the majority ethnic group with approximately 84 percent of the population, while 14 percent are Tutsi and 1 percent are Twa. In the years following the 1994 genocide, a transitional justice process – dealing with the violence of the past – was to find its most tangible embodiment for the ordinary Rwandan during the numerous *gacaca* meetings in every local community (hill).

The post-genocide Rwandan way of dealing with the past, and the *gacaca* process in particular, has received wide attention, often and remarkably with diverging analysis and conclusions. A World Bank report refers to significant steps forward in the domain of reconciliation and asserts that the *gacaca* court system has been 'instrumental in advancing reconciliation and accountability following the genocide' (World Bank, 2004: 1). Some argue that the *gacaca* process not only fosters reconciliation but also initiates a democratic culture of deliberation and dialogue (Wierzynska, 2004). Others, however, see *gacaca* as 'an exercise in victor's justice, coercing participation, restricting freedom of speech on sensitive subjects and collectivizing guilt' (Waldorf, 2006: 85). Clark (2007) argues that the hybrid nature of the *gacaca* system is an asset to the process while others identify it as the weakest link in the system (Ingelaere, 2008: 25–9). While a minister in 2007 claimed that 75 percent of Rwandans are reconciled (*The New Times*, 2007), others dismiss the reconciliation process stating that post-genocide justice in Rwanda consists of a return to feudal structures and subordination for the Hutu (Centre de lutte contre l'impunité et l'injustice au Rwanda, 2005). In a discussion on the nature of the Rwandan justice system (thus including *gacaca*) Human Rights Watch concluded, after three years of research, that it operates in a political context that is detrimental to fair trial guarantees and that 'there is an official antipathy to views diverging from those of the government and the dominant party' (Human Rights Watch, 2008: 2). William Schabas, however, who undertook the same exercise, refutes most of the claims by Human Rights Watch and summarized certain perspectives on Rwanda as 'unrealistic assessments of problems that are more imaginary than real' (2008: 59). In a final assessment of the court system Human Rights Watch concluded that 'the compromises made in adapting the customary community-based practice to try grave criminal offences led to significant due process violations being built into the system and a degree of disappointment on the part of many Rwandans' (2011: 130). Government officials responding to the Human Rights Watch report were quoted saying it was 'abusive and misleading' and 'intended to make a mockery of Rwanda's efforts to promote justice and reconciliation' (Mazimpaka, 2011).

Considering these divergent accounts one almost wonders whether these observers are looking at the same country, the same institution. One might be tempted to conclude that there are as many *gacaca* court systems or practices as there are hills in Rwanda: a thousand as Rwanda's nickname suggests: 'the country of a thousand hills' (Ingelaere, 2009c).

This article argues, on the contrary, that it is not impossible to understand the 'modernized' *gacaca* courts system and the social process it generates. Diverging accounts of the modern *gacaca* courts in Rwanda have to do with 'who is looking' and 'how one is looking'. The lack of consensus – at first sight – does not signal the impossibility of understanding *gacaca* and it does not give rise to an absolute relativism on *gacaca* that regards all accounts as relevant and equal. It only signals an apparent difficulty in separating image from reality and distinguishing the imaginary from the real, even in well-researched reports and scientific writings. And it demands an effort to provide clarity with regard to a seeming disorder of representations.

The objective of this article is to reflect upon the way the modernized *gacaca* courts are seen and have been described since their inception and subsequent implementation on the ground. This is as such more a meta-representation than a representation. It is thus not an endeavour to represent the *gacaca* courts. Our concern here is the attempt to map the process of establishing the representation of the *gacaca* courts.

It is, in fact, our own fieldwork and grassroots experience with the functioning of the modern *gacaca* court system that informs this analysis. The exercise undertaken here is based on a strong familiarity with actual *gacaca* practice. Therefore, the meta-representation presented here should be read against the background of representation(s) of the *gacaca* practice that are available elsewhere (Ingelaere, 2007, 2008, 2009a, 2009b, 2009c, 2011). These last representations, as well as the current meta-representation, are informed by an ethnographically driven approach through which 1917 trials that dealt with the allegations against a total number of 2573 individuals were observed and analysed.

In addition, the analysis in this article is informed by hundreds of formal and informal interviews and conversations with Rwandans practising *gacaca*. Over 30 months spread over a period of eight years since 2004 were spent in mainly rural areas of Rwanda. The objective of these research stays, observations and conversations was the construction of an adequate representation of the modern *gacaca* court system. The process of constructing an empirically adequate representation of the reference reality under investigation should be the objective of any scientific undertaking. The reference reality is that particular aspect (piece) of social space and time that the researcher wants to report on and that he/she aims to understand (Olivier de Sardan, 2008: 8, 47).[1] Essential in this scientific process is the fact that 'representation stems from the principle of the equivalence of the sign and the real (even if this equivalence is utopian, it is a fundamental axiom)' (Baudrillard, 1994: 6). We argue that the particular representation of the *gacaca* courts by the Rwandan regime constitutes in essence a 'model' that is disconnected from the real world. This representation not only tends to generate a uniformity that does not exist, it also depicts, to a large extent, a non-existent and thus imaginary reality. What is more important, however, is the underlying strategy nevertheless to present this imaginary reality as an empirically adequate representation of the reference reality. According to Baudrillard a representation that 'masks the *absence* of a

profound reality . . . is of the order of sorcery' (1994: 6). This is why we shall refer to magical ways of thinking to render this phenomenon intelligible.

The first section presents a general and very broad overview of the main characteristics of modern *gacaca* courts. In a subsequent section attention is paid to the process that generates the particular representation of the modern *gacaca* courts upheld by the Rwandan regime: numerical legibility, magic syllogisms and performative speech lie at the heart of the strategy designed to mask the absence of the actual and profound reference reality of the representation in question. In addition, a first generation of academic studies on *gacaca* is characterized by magical legalism: they depict a theoretical model that is primarily based on law or law talk.

In the second part of the article we argue that fieldwork approaches that adopt a bottom-up perspective and that are often ethnographically driven constitute an alternative approach. They unmask and destabilize the process of 'making models' and the models themselves. These approaches generate representations that extensively make use of 'objectified traces of pieces of the real' (Olivier de Sardan, 2008: 50). But dangers exist here also. The concepts of 'magical legalism' and 'theoretical magic' are used to distinguish representations of the *gacaca* courts as a mainly imaginary model from empirically adequate representations based on the actual modernized *gacaca* practice.

The modernized *gacaca* courts: an overview

In 1999, after a period of reflection and a round of consultation, a commission established by the (then) Rwandan President Pasteur Bizimungu proposed to modernize and formalize the 'traditional' dispute-resolution mechanism called *gacaca* in order to deal with the approximately 130,000 persons imprisoned for offences related to the genocide at that time – a task the ordinary justice system could not accomplish in a satisfactory way. This commission was the result of and worked in the context of the so-called *Urugwiro* meetings,[2] which took place between May 1998 and March 1999. Every Saturday a meeting was held at the President's office with 'representatives of Rwandan society' to discuss serious problems facing the Rwandan people. Proposals for solutions were debated. The question of justice and dealing with the genocide was given a prominent place on the agenda. The use of *gacaca* was decided upon. The report of these meetings (Republic of Rwanda, 1999) reveals that the name '*gacaca* jurisdictions' should be used to suggest that the Rwandan heritage ('*gacaca*') is a source of inspiration for the new court system which, nevertheless, has the same competence as the classical courts ('jurisdiction'). The blueprint of that type of *gacaca* can be found in the report of the *Urugwiro* meetings. It is the embryo of what was later codified in law, implemented and constantly adapted.

Indeed, the modern *gacaca* courts are loosely based on a traditional conflict-resolution mechanism that existed in Rwanda before colonial rule. Conflicts between families were settled by the old and wise men of the community – the

inyangamugayo – bringing together the parties in the dispute. These gatherings were meant to restore order and harmony (Ntampaka, 1995, 2003; UNHCHR, 1996). After independence, *gacaca* gradually evolved into an institution associated with state power as local authorities supervised (or took on the role of) *inyangamugayo* (local judges) (Reyntjens, 1990; Van Houtte et al., 1981). Fieldwork conducted at the time also established that the *gacaca* was already functioning in its semi-traditional way in some areas immediately after the end of the genocide (Rose, 1995; UNHCHR, 1996). It seems clear that the *gacaca* mostly functioned as it did before the genocide, meaning that it dealt with minor disputes within the population.

In the modernized system three fundamental principles – cornerstones – were incorporated in the *gacaca* legislation in order to facilitate the process (Ingelaere, 2008). Those suspected of genocide crimes and crimes against humanity are prosecuted in parallel courts through a categorization according to the crime committed. Ordinary courts try those identified as presumably national top responsible persons and orchestrators, while the *gacaca* courts judge others – the majority of the cases – on their respective hills. A second principle is the popularization or decentralization of justice by installing numerous courts in every administrative unit of the state. This procedure is loosely modelled on the traditional *gacaca* with lay persons presiding as judges and the (active) involvement of the entire population as 'General Assembly'. A final cornerstone is the principle of confession to increase the evidence and available information. *Gacaca* trials take place not with evidence gathered by police and judicial authorities but through the testimonial practices of perpetrators, victims and bystanders during the trial. It is the discursive encounter in the *gacaca* sessions that functions as catalyst of the transitional justice process.

Numeric legibility

The Rwandan Patriotic Forces (RPF) defeated the regime that was responsible for the genocide in 1994. As the military victor the RPF was able to set the agenda for post-genocide Rwanda without much constraint. The post-genocide Rwandan regime is characterized by 'transformative authoritarianism' (Straus and Waldorf, 2011: 5). President Paul Kagame has repeatedly indicated that he 'wants to build a new country' – a wish that needs to be taken literally. Liberation from a genocidal order is one of the underlying ideological vectors and legitimization strategies. A bold social engineering campaign has been instituted in the post-genocide period in order to translate into practice the vision incorporating, among others, the following set of ideas.

The RPF must be seen as aiming to create the *true* postcolonial Rwanda. The colonial powers distorted the essence of Rwandan culture and this colonial mindset sustained the first two republics between 1962 and 1994. Rwandanness or Rwandanicity, not ethnicity, should define relations between state and society. Building or (re-)establishing this unity of Rwandans goes together with eradicating

the 'genocide ideology'. Reconciliation, an element that had begun to dominate the post-1994 ideological framework by the end of the 1990s, is also couched in terms of unity, while the overall objective of justice for genocide crimes (in the sense of accountability) has been one of the cornerstones of the regime.

Home-grown traditions derived from the Rwandan socio-cultural fabric need to replace imported, divisive practices. *Gacaca* is one of them.[3] These institutions are seen as part of what is called 'the building of a democratic culture' that is in essence conceived as being 'closer to the consensus-based type of democracy' (Rwanda, 2006a: 151).

The choice and installation of the *gacaca* courts thus fit perfectly into this vision. They are considered to be home-grown and are presented as an almost pre-colonial resource; the courts are meant to fight genocide and eradicate the culture of impunity. In addition, they need to reconcile Rwanda and Rwandans. The *gacaca* courts, as an institution, are as such a mechanism in a larger campaign of social engineering that needs to transform this vision into reality as well as transforming reality into this vision, as we will explain later.

It is within the above detailed ideological framework and from the vantage point of social engineering that the *gacaca* courts are 'seen' by the Rwandan regime. It is thus not at all surprising that the *gacaca* courts are also talked about in the language that belongs to such a campaign after their implementation on the ground. Especially the 'numerical' and 'aggregate' facts are of interest to a state, as James Scott (1998: 80) explains in his analysis of how states see society. What is indeed striking about the communication by state actors on the actual *gacaca* proceedings is the dominance of the numerical in the discourse.[4] That is, the quantitative accomplishments of the *gacaca* process: number of cases compiled, number of accused according to category and administrative structure, number of judges elected or trained or replaced etc., number of judgments pronounced, number of motorbikes handed out to staff, number of trauma cases, number of killings in the margins of the *gacaca* process . . .[5] – the list is virtually endless.

Magic syllogisms

The communication is not only about numbers, of course. The *gacaca* legislation is also often referred to. But the reference reality of the actual *gacaca* practice is often represented by using numerical facts, thus through a process of 'counting'. In addition, in its communication on *gacaca* since its inception, government sources consistently evoke the following elements:[6] it is a home-grown solution derived from Rwandan culture; the court system guarantees equitable justice and respects fundamental human rights; the truth surfaces through the *gacaca* proceedings and the court system accelerates dealing with the backlog of genocide-related cases; it is popular justice (referring to both its origins and the nature of the participation of the population); confession, remorse and pardon are the cornerstones of the *gacaca* process; and, finally, justice through the modernized *gacaca* is essentially

restorative and reconciliatory. With the *gacaca* process well under way on a national scale since 2005, these characteristics are no longer presented as a scheme, a project to be implemented or the objectives of such a project but as the characteristics of the actual *gacaca* practice.

The question is whether these more qualitative or evaluative characterizations are an adequate description of the actual *gacaca* practice that constitutes the reference reality. First, what is clear is that these descriptions match the general ideological framework and the objectives of *gacaca* derived from this framework as detailed above. It is evident that the design of the system shapes the actual *gacaca* practice and thus also the participants' behaviour and perceptions. To that extent it is conceivable, although not absolutely necessary, that the practice generally corresponds with the overall scheme. Such is the objective of all grand schemes in implementation. Nevertheless, in the case of the Rwandan *gacaca* courts the question needs to be asked whether and to what extent this is the case, thus whether the characterizations of the *gacaca* practice by the regime are accurately capturing the reference reality in question.

It is questionable whether this representation adequately depicts the reference reality. For the simple reason that it is inconceivable for a visionary authoritarian state to have a reality different from its vision, to have a gap between the scheme and its implementation. Since there is no perceived difference between vision and reality, it is also impossible to communicate differently about the actual observed practice once the vision is being implemented.

The writings of one of these state actors, General Frank Rusagara, provide testimony with regard to this phenomenon. Rusagara is one of the ideologues of the regime. In several publications he outlines the Rwandan regime's vision on the modern *gacaca* courts, which consistently contains the elements detailed above (Rusagara, 2005). In an opinion article published in the government-friendly newspaper he reiterates these claims (Rusagara, 2006). In addition, he gives some examples of discussions he had on *gacaca* with Rwandan youth in so-called *ingandos*. *Ingandos* are civic education camps, to which we will return later. Some of the participants evoked the retributive or punitive character of *gacaca* (probably based on their actual experience of *gacaca*) and highlighted the fact that the modern *gacaca* practice was a source of insecurity. Rusagara replied that 'this illustrates how the spirit of *gacaca* is misunderstood'. And he repeats the dominant government view on the modern *gacaca*: it is a restorative type of justice etc. Regarding the security concerns, he replies that 'the right to security is enshrined in the Constitution under the bill of rights. Therefore, the government, in ensuring security for all, does not favour any one group.'

What Rusagara states on security is, in fact, a sort of 'magic syllogism' (Cohen, 2002: 108). Cohen uses this term in his book, *States of Denial*, to refer to the techniques of denial that governments use to counter accusations of wrongdoing. An allegation cannot be true since the act is illegal according to domestic legislation, the constitution or the ratification of international treaties and conventions. According to Rusagara there can be no insecurity since the law guarantees security.

What is in any case out of sight is the reference reality of the *gacaca* practice in such a response.

Magical legalism

There are evidently many other 'observers' of the modern *gacaca* courts apart from the Rwandan state and its agents. Analyses of the legal and institutional framework were gradually published with the invention and gradual shaping of the contours and objectives of the 'new' *gacaca* system. The model of justice emerging from these first steps led initially to a wide array of reflections, almost all from a normative or purely theoretical perspective (Betts, 2005; Corey and Joireman, 2004; Daly, 2002; Digneffe and Fierens, 2003; Drumbl, 2000a, 2000b, 2005; Fierens, 2005; Gaparayi, 2001; Goldstein Bolocan, 2004; Harrell, 2003; Kirkby, 2006; Lin, 2005; Longman, 2006; McKenna, 2006; Ntampaka, 2003; Raper, 2005; Reyntjens and Vandeginste, 2001; Sarkin, 2000, 2001; Schabas, 2005; Staub, 2004; Tiemessen, 2004; Uvin, 2003, n.d.; Uvin and Mironko, 2003; Vandeginste, 1999, 2000; Venter, 2007; Wells, 2005; Wierzynska, 2004). Human rights organizations primarily analysed and criticized the emerging *gacaca* model from a legal human rights perspective (Amnesty International, 2000, 2002a, 2002b; Human Rights Watch, 2001, 2002a, 2002b, 2004). The framework of intervention and international support and monitoring (in the field of human rights) related to the introduction of the *gacaca* system also attracted attention when the *gacaca* implementation slowly gained momentum (Chakravarty, 2006; Meyerstein, 2007; Oomen, 2005).

It is evident that the majority of these studies are primarily legalistic and/or theoretical since they were almost all written before the nationwide implementation of the modernized *gacaca* on Rwanda's hills. At that time, the *gacaca* laws, policy documents and – occasionally – interviews with practitioners and policy-makers were the only 'sources' available. When taking that element into account many studies were and still are instructive. In addition some studies analysed the opinion and aspirations of the people of Rwanda regarding the genocide legislation and *gacaca* courts (African Rights, 2000; Babalola et al., n.d.; Gasibirege and Babalola, 2001; Liprodhor, 2000; Longman et al, 2004; Morril, 2004; Republic of Rwanda, 2003). The latter studies present a bottom-up and empirically informed perspective but are representations of popular attitudes and opinions on *gacaca before* its (nationwide) implementation.

Revealing is the fact that many of these studies use the term 'model'. What some studies seemed to forget is that at this stage, the 'modern *gacaca*' as it was emerging on paper and in the minds of policy-makers, practitioners and observers was simply that: a legal and theoretical model. McEvoy (2007), following Cohen in *States of Denial* (2002), uses the term 'magical legalism' for these types of representations. All these types of representations of the modernized *gacaca* system have something in common: they are disconnected from the 'real world'. They are primarily based on law or law talk.

In these studies the magic of the legalism is neutralized when the conditional status, the normative, the assumption or the prediction is identified through word-use and phrasings of a specific kind: such as 'should', 'ought', 'might', 'needs', 'could', 'seeks', 'has the potential', 'has the objective', 'it is believed' 'the prospect is', etc. A good example of such a careful wording in the numerous writings on the *gacaca* courts is the study by Daly (2002). Or by stating, as Mark Drumbl does, for example, that 'the success or failure of *gacaca* remains unproven and contingent' (2005: 59). But one is dealing with magical legalism in full force when there are simple statements of 'is' or 'will'. An example is the study by Wierzynska (2004). Without any trace of an insight into the actual *gacaca* practice, the author simply states that her analysis of the modern *gacaca* courts 'demonstrate[s] how it helps to promote participation and contestations' etc.

Magical thinking: performative speech

General Rusagara's reply regarding the security concerns – referred to above – thus has something 'magic' to it. But also the characterization of *gacaca* as restorative, guaranteeing due process and human rights, etc. contains a 'magical' dimension. These characterizations of the *gacaca* courts are so-called 'constatives', according to classical categorization in the philosophy of language. They are truth-evaluable, thus true or false depending on the empirical verification of the utterances. However, from the perspective of the Rwandan government and its actors – such as Rusagara – these characterizations of the *gacaca* process are 'performatives' (Austin, 1962) or 'speech acts' (Searle, 1969). A declarative performative utterance, such as in the case of the *gacaca* characterization by regime agents, is a speech act that changes the reality in accord with the proposition of the declaration. The act of saying simply makes it true. Normally this is the case in, for example, marriage ceremonies ('I pronounce you man and wife') or a judicial verdict (pronouncing someone guilty or innocent). In these cases the existing reality is changed through the utterance. As Malinowski explained in *Magic, Science and Religion* (1954) this is a type of magical thinking in which words are thought to have the ability to directly affect the world. We argue that in the case of the *gacaca* characterization by the Rwandan regime something similar is at stake.

One could object that this is a common practice of governments and that what are considered as being performative utterances from the perspective of the Rwandan regime remain simply constative utterances that are truth-evaluable by the audience. Indeed, that is exactly what the practice-based, bottom-up representations of the *gacaca* courts and the dynamics they generate do (or better, should do, since they have varying success as we will explain below). However, the performative aspect of the characterization of the *gacaca* courts largely resides in the underlying and largely ritualized strategies to produce this particular representation of the *gacaca* process as a reality. Instead of adapting the scheme to the actual perceptions and experiences the authoritarian state will go the other way around and adapt the latter to the scheme.

As such, performative speech:

> will often, or even normally, produce certain consequential effects upon the feelings, thoughts, or actions of the audience, or of the speaker, or of other persons: and it may be done with the design, intention, or purpose of producing them. (Austin, 1962: 101)

And magical thinking generally goes hand in hand with ritualistic performances such as ceremonies, gatherings, festivities, etc. Two of these quasi-ritual strategies aimed at producing particular thoughts potentially followed by desired actions of the audience are used with respect to the modern *gacaca* courts. One is designed for the audience inside Rwanda, the other targets the outside world. Both are aimed at reducing the truth-evaluability of the government-produced *gacaca* representation. Through their performative force these strategies create this representation as reality, thus as adequately depicting the reference reality in question.

The authoritarian state can to a great extent transform reality and mould it to its vision. But reality is always resilient to artificial transformations, especially in the consciousness of (segments of) the population. Since the regime fails to actually fully implement its vision on the ground, it decides to go the other way round: representations of reality are adjusted to its vision.

When Danielle de Lame conducted fieldwork in Rwanda in the late 1980s, she noticed that all public gatherings – whether festive religious events, ritualized public drinking activities or 'politico-private' gatherings – 'serve to transmit meaning, provide the instruments of memorization, and create *consensus*' (2005: 303). What she saw as a cultural predilection for consensus was, of course, encouraged and enhanced after the 1994 genocide as part of the massive effort to restore order and maintain security. Sensitization campaigns, commemoration ceremonies, speeches by dignitaries, and re-education programmes – the so-called *ingando* and *itorero* – are intended not only to eradicate 'genocide ideology' but also to promote a specific image of Rwanda, a desired representation.

It is primarily through the *ingando* (and its derivatives such as *itorero*) that the government's *gacaca* representation (and many other representations) is given performative force inside Rwanda. We mentioned that General Rusagara made his 'magical' remarks in an *ingando*. And the overall characterization of *gacaca* as detailed above comes from the course manual used during the *ingando* camps. This is no coincidence. *ingando* is not only about re-education but as much about political indoctrination (Mgbako, 2005), social control (Thomson, 2011a) and the reproduction of power (Purdekova, 2008, 2011).[7]

I have personally observed, through participant observation in an *ingando* for demobilized rebels and through an analysis of several diaries I asked participants to keep during their stay in *ingandos* (throughout the country), that the *ingando* is the prime locus where the gap between vision and reality is bridged; that is, in the minds of its participants. The ideas propagated during the teaching sessions addressing particular topics, such as for example the modern *gacaca* courts, are given performative force by means of a range of strategies. The physical setting of

the camp is important, where normal activities are suspended and where participants are obliged to wear military fatigues that strip from them the outward manifestations of their individual particularities. Another strategy is the use of songs. The themes of the songs tacitly underscore some ideas propagated during the re-education sessions, and the act of singing is a sort of mnemonic device supporting the teaching activities. At night and at the end of every teaching session, the students collectively sing songs that are very militaristic:[8]

> Aieh Aiehh, my military commander gives me my firearm SMG,
> I see the infiltrator
> I see him crawling on the ground
> I see him in the banana plantation
> My military commander gives me my firearm SMG.
> I see the infiltrator.[9]

The songs often deal with issues of good and evil, friend and enemy.[10] These themes refer back to the physical acts of violence experienced by Rwandans in the past, and the songs contain references to ideas and thoughts. A verse in one of the songs goes as follows:

> On the battlefield, I will never be discouraged
> As long as the enemy has not renounced his ideas
> Let's unite to fight the enemy
> Victory will be on our side.[11]

Although there have been no overt hostilities on Rwandan soil for several years, the songs continue to address the issue of the battlefield and the enemy or evil that needs to be eradicated. Since there is no physical enemy (in the military sense of the word) inside Rwanda, and bearing in mind the objectives of the *ingando* and *itorero* activities, it seems clear that the songs also refer to the enemy within, that is, inside oneself. As a result, one of the enduring consequences of participation in *ingando* is the adoption of a sort of auto-censorship (*kwibwiriza*). The repeated act of singing gives the ideas propagated in the camp performative force while other opinions are subtly repressed.

One of these songs indirectly deals with the *gacaca* by addressing the *gacaca* objectives of unity and reconciliation. In the same song, the issue of responses to different opinions, as well as the good/bad Rwandan (or visitor to Rwanda) surface:

> I will be at the Rwandan frontier with the eyes fixed towards those approaching
> The one transporting the basket of peace, unity and reconciliation,
> I will show him my smile and will let him pass
> The one presenting himself differently,
> I will stop him and I will force him to change opinion,
> Oh Rwanda, I love you.[12]

It seems clear that people with certain opinions are not welcome in Rwanda. The opinions that are accepted are those propagated during the *ingando* sessions, which includes opinions that are more magical than real.

The examples mentioned above are indications of the approach adopted *inside* Rwanda. Several strategies are deployed to influence the image of Rwanda for outside consumption and thus also the outsiders' understanding of the *gacaca* courts. Often this comes down to denial (Reyntjens, 2011), at times by using the magic syllogisms referred to above. Recently another strategy, one that needs to give the speech acts made by the regime performative force in the outside world, became known through the publication of an agreement made in 2009 between the Rwandan government and a public relations firm (U.S. Department of Justice, 2011a).[13] A detailed public relations campaign was agreed upon that had to create a positive 'bottom-up narrative' 'to educate audiences about the new Rwanda'. Thanks to the adopted communication strategies such a narrative seems to flourish organically but it, nevertheless, corresponds with the desired representations of the Rwandan regime. '*Gacaca* as a just solution' figures prominently as something to be branded worldwide next to two other themes: 'Rwanda's Miracle: The Healing of a Nation' and 'Rwanda's Visionary Leader'. Apparently, 'offensive and defensive strategies to shape perceptions' were deployed through media outlets that have 'the greatest possibility to shape opinion'. One of the strategies entails 'erecting walls of pro-Rwandan data'.

Hardly anywhere there is a concern or a reflection by the public relations firm whether they also communicate about something that has an actual reference reality including the representation of the *gacaca* courts they send around the globe. They simply seem to accept the representation of *gacaca* courts presented to them by the Rwandan regime. This does not have to be surprising for this PR-firm. The fact that it executed a similar campaign for Gaddhafi's Libya not so long ago is telling in that respect (U.S. Department of Justice, 2011b).[14] As Pottier observed (2002: 207), 'reality is what Rwanda's political leaders, as moral guardians tell the world . . . it is.'

Destabilizing the model: the *gacaca* practice

An understanding of the nature of the operation of the *gacaca* courts and the social process it generates in the wider Rwandan society only became possible since their implementation nationwide in 2005. During the initial stages of the *gacaca* practice almost no studies were based on in-depth field research, with the notable exception of the reports of non-governmental organizations that followed the *gacaca* activities on-site in the pilot areas and subsequently nationwide; they were rather meant for operational purpose but also provided – to varying degrees – interesting insights. Penal Reform International focused mainly on the social dimension of the *gacaca* practice, Lawyers without Borders (Avocats sans Frontières – ASF) adopted a purely legal perspective.[15]

Academic studies that actually do focus on the *gacaca* practice and provide an in-depth insight in the *gacaca* practice are increasing, but remain limited as of 2012 – when the official end of the operational phase of the *gacaca* process (Hirondelle News Agency, 2011) will be proclaimed (Brounéus, 2008, 2010; Buckley-Zistel, 2005; Burnet, 2008; Clark, 2007, 2008, 2010; Doughty, 2011; Honeyman et al., 2004; Honeyman and Meierhenrich, 2002; Ingelaere, 2007, 2008, 2009a, 2009b, 2009c, 2011; Karekezi et al., 2004; Megwalu and Loizides, 2010; Molenaar, 2005; Rettig, 2008, 2011; Rimé et al., 2011; Takeuchi, 2011; Thomson, 2011b; Thomson and Nagy, 2010; Van Billoen, 2008; Waldorf, 2006, 2010). In addition, the Rwandan government as well as NGOs have undertaken impact studies to understand the actual *gacaca* practice (African Rights, 2008; Republic of Rwanda, 2007, 2008, 2010). The actual methodological approach, the research techniques used and the interpretative process might vary in each of these studies but the central concern is the actual practice of the modernized *gacaca* courts.

The studies that take the *gacaca* practice as reference reality should be characterized by three elements. First, a bottom-up approach that is practice- and perception-based. Second, the author doing fieldwork should be able to physically and psychologically move far away from the centre of society (Ingelaere, 2010). The Rwandan establishment operating at the centre of society is crafting a preferred image of the country through active interference in scientific research projects, through the cultivation of an aesthetics of progress and through the subtle use of a complex communication code.[16] Third, such an approach should be characterized – especially with respect to the final stages of constructing the findings – as aware of and critical to varying degrees of what we have called 'magic' in the processes that generate state and academic representations of the *gacaca* courts.

The above-mentioned studies adopt these three principles to varying degrees. Based on the findings of this type of studies some general trends are evident that question the government's representation of the *gacaca* courts as well as many aspects of the dominant 'magical legal' *gacaca* model as depicted in the first generation of academic studies on *gacaca*. As mentioned previously, the latter mostly relied on legal documents as well as normative and theoretical assumptions. Most of the academic studies that adopt a bottom-up perspective – a second generation of *gacaca* studies – agree on these trends with the notable exception of Phil Clark (2007, 2008, 2010).

Theoretical magic

Therefore, some particular attention needs to be paid to Phil Clark's representation of the modernized *gacaca* courts in his book *The Gacaca Courts, Post-genocide Justice and Reconciliation in Rwanda* (2010) since it is largely presented as a bottom-up perspective. It is, as the back cover states, even 'an ethnographic investigation' based on 'seven years of fieldwork' in Rwanda that 'explores the ways in which Rwandans interpret *gacaca*'.

The use of the term 'ethnography' suggests that an important part of the data were gathered through participant observation, the prime characteristic of ethnography (Atkinson et al., 2001: 4–5). In addition, the objective of focusing on Rwandan interpretations of *gacaca* suggests that we can expect a mainly *emic* point of view, that is, a representation in which important categories and meanings emerged from the ethnographic encounter rather than being imposed from the 'outside' based on existing models and theories. For three reasons the book does not contain such a representation of the *gacaca* courts.

First, from the outset Clark aims at something else, namely: 'to more clearly analyse what *gacaca* is designed to achieve than most observers – and many participants in *gacaca* – have done so far' (2010: 4). The focus is thus on the design of *gacaca*, 'the model', not its double, the actual practice. In addition it suggests 'an interpretation of the interpretations' of the modern *gacaca* not an interpretation of the modern *gacaca*. And that is what Clark is actually doing: he interprets representations of the modern *gacaca*: those of political actors, so-called 'academic commentators' and 'the population'. For Clark these are all simply 'sources' that need to be scrutinized, even disciplined from his vantage point of panoptical insight. Representations need to be carefully weighed and the best 'arguments' will win the debate. The criterion for winning the 'debate' is thus mainly rhetorical skill and theoretical force, not the extent of empirical rigour deployed in the process of constructing the representation of the *gacaca* courts as a reference reality. This is not what an ethnography generally sets out to do and it does not bring us any closer to an understanding of what the modern *gacaca* actually is.

Second, as the previous quote also reveals, Clark wants to analyse *gacaca* 'better' than its participants, the Rwandans who actually *practise gacaca* on the hills in Rwanda. Indeed, he states throughout the book that a significant number of the practice- and perception-based insights of the population need to be rejected (Clark, 2010: 230) or countered (2010: 248). What Phil Clark is doing is to a certain extent similar to what Rusagara does in his op-ed article: the population says X or does X (because he has observed this either during his own fieldwork or that of others), but Clark says the objective of *gacaca* is Y (remember: his aim is to analyse the design), thus X is wrong. The question is whether this can even remotely generate an insight into the *gacaca* courts as a reference reality?

Third, although Clark's concern is in fact different from constructing an adequate representation of the actual *gacaca* practice, he, nevertheless, attempts to have this other perspective *pass* as an adequate representation of *gacaca*. To do so, he uses the magical devices we identified above as well as other rhetorical tricks. On page 195, for example, it is stated: 'This view of open truth-telling largely reflects the influence of the traditional institution of *gacaca*', and on page 164 it is stated that popular participation in *gacaca* is 'a valuable systemic expression of a Rwandan worldview of human identity as communally embedded and ''truth'', both legal and non-legal, as a negotiated outcome reached via communal discussion in public settings'. Nowhere in the entire body of empirically informed

sociological or anthropological work on Rwanda can something be found that would support these assertions. They seem more of the order of 'theoretical magic'.

According to Sir James Frazer (1993: 11) in *The Golden Bough*, theoretical magic is 'a spurious system of natural law', that is, it is thus a non-genuine 'statement of the rules which determine the sequence of events throughout the world'. While the statement that *gacaca is* restorative or retributive solely based on the model should be considered as magical legalism, the statement that the truth *leads* to healing and reconciliation as such and also in the Rwandan context should be considered as 'theoretical magic'. There is hardly any empirical evidence that the latter statement is actually true, let alone that it would be true in Rwanda (Brounéus, 2008, 2010; Buckley-Zistel, 2005a; Ingelaere, 2007, 2009b).

Magical realism

Another rhetorical device used by Clark is 'forgetting' the element of time in the production of *gacaca* representations. Clark correctly typifies the modern *gacaca* courts as a dynamic, lived socio-legal institution. What he forgets is that the representations of *gacaca*, especially in academic writings, are also dynamic in kind. We have mentioned that there is a first and a second generation of academic studies on *gacaca*. In Clark's analysis representations of the *gacaca* courts as practice are questioned by referring to studies conducted before the launch of the actual *gacaca* practice. Clark thus invokes counter-arguments presented in studies that simply depict the model and all its 'magical' thinking that goes with it.

The seemingly confusing 'debate' that Clark is trying to depict and settle – political actors versus the academic observers versus the population, but especially also the 'debate' he evokes within the academic community – can only produce the conclusions Clark reaches because he is not taking into account the issue of time. The debate on differing representations by academics is not a debate any longer (or a different debate) when one takes into account that not everyone is (has been) talking and writing about the *same gacaca* courts. Some refer to the model, others to its double, the practice.

Notice how the representations by Waldorf and Ingelaere are continuously countered by those of Karekezi and Gasibirigi (Clark, 2010: 141–5, 174, 201–5, 245–8, 327, 330–1 for example). The fact that the latter are Rwandan does not make the difference as Clark suggests. What is more revealing is the fact that the studies of Gasibirigi only deal with attitudes towards *gacaca before* its implementation on the ground. An additional study deals with the election of the *inyangamugayo* in 2002, long before the actual start of *gacaca* on the ground. The studies of Karekezi are equally based on the elections of *gacaca* judges in 2002 and some preliminary insights into the *gacaca* practice based on the information-collection phase in a pilot *gacaca* court.[17] Waldorf's and Ingelaere's representations of *gacaca* are based on the actual *gacaca* practice in all its dimensions. That does not give the latter studies free passage however. They are open for scrutiny regarding the empirical rigour deployed to come to the representation of the *gacaca* courts. But that does not mean that they can be

solely challenged based on theoretical ideas and normative assumptions. On page 247 these same authors are 'corrected' by invoking Harrell (2003) and his depiction of the *gacaca* courts as essentially restorative. Harrell's study of *gacaca* was done before the implementation and depicts the 'model'. Notice, therefore, also the careful wording by Harrel, 'it may', which Clark also uses. Nevertheless, the conditional becomes a descriptive in Clark's narrative. The question is again how this can be an interesting way of 'assessing' something.

Another rhetorical trick, apart from masking the element of time, is calling something a misrepresentation of *gacaca* after having misrepresented that representation in the first place. For example, according to Phil Clark (2010: 325–31) many authors conclude that the modern *gacaca* courts are not (easily) facilitating reconciliation. And he, in fact, comes to a similar conclusion based on his insight into the actual *gacaca* practice (Clark, 2010: 309). What he subsequently does, however, is to state that these authors come to such a conclusion because the system is wrongly depicted as being to a great extent retributive. What Phil Clark does here is to consider the representations of the actual practice of *gacaca* as if they were a normative point of view, an advocacy attempt for legalistic assessments. Clark suggests that all these representations are the result of a particular approach, namely 'human rights as retribution' that dominates the transitional justice paradigm. In doing so, Clark follows McEvoy (2007) has (rightly) called for letting go of legalism, both in the design and assessment of transitional justice initiatives. However, the fact that these studies use the word 'retributive' has more to do with an insight into the actual *gacaca* practice than the adoption of a particular legalistic or human rights perspective.

The following type of reasoning is prominent throughout his book: transitional justice should create positive non-legal social outcomes; the *gacaca* courts are an instance of transitional justice; conclusion: the *gacaca* courts create positive non-legal outcomes. Notice the blurring of normative and descriptive propositions. It is this type of reasoning that necessitates discarding the reference reality for the conclusions to remain valid. As we have argued, it requires rhetorical skill, selective reading and magical thinking to maintain the conclusion. As a consequence, the result is more of the order of magical realism: the blurring of real-world insights with elements that are more imaginary than real. Clark consistently mixes his theoretical/normative concern for non-legalistic forms of transitional justice processes with the actual representations of the modern *gacaca* courts. The first position can be defended and is interesting. In fact, adequate representations of the *gacaca* practice may even give rise to a defence of such a position. Note, however, that it is a theoretical/normative position. As such it should give rise to the necessity for *gacaca's* 'architects [to] reflect upon how instantiating some of its informal and communal aspects could boost its restorative and reconciliatory potential' (Drumbl, 2007: 99). Instead of going back to the drawing board and adjusting the model *on paper*, Phil Clark decided to misrepresent the actual modern *gacaca* practice. In doing so we hardly learn anything about the model nor the actual *gacaca* practice.

Conclusion

When trying to understand the actual functioning of the *gacaca* courts one needs to be aware of the ideological representations made by state actors and the performative strategies undertaken to promote these representations. Second, it is necessary to identify 'magical' thinking in the processes of generating *gacaca* representations. These strategies mask the fact that the representations mainly refer to an ideological and normative, thus preconceived, idea of what the *gacaca* courts ought to be. An ideological or normative representation has no reference reality but it can be projected onto a reference reality. It can even be projected as the reference reality. In these cases, however, something goes wrong in the process of establishing and guaranteeing the empirical adequacy between the reference reality and its representation. In doing so, one invokes 'a reality that is in fact different' (Olivier de Sardan, 2008: 269). As a consequence this representation is more imaginary than real. The reference reality of the *gacaca* courts is its practice, it is not the *gacaca* model on paper and in the discourse of the regime's agents.

The emergence of *gacaca* both as model and subsequently as practice is a dynamic process. This is also the case in the writings that represent the *gacaca* courts. In that regard notice the seemingly remarkable changes in the representations made by authors who have followed the developments of the *gacaca* courts over the years: compare for example Drumbl (2005) and Drumbl (2007) as well as Longman (2006) and Longman (2009). These might seem to be 'strange' changes of opinion, but they can actually be considered as examples of sound scientific reasoning where the representation is adapted according to the available insights. Some authors seem to have a hard time doing so, despite the available evidence: compare Clark (2007) and Clark (2010). It signals a difficulty to distinguish the model from practice or simply a continued preference for the model.

With the *gacaca* practice actually under way and even completed, the magic should have been reduced. But 'magical thinking' continues to haunt *gacaca* studies. There is often a continuous shifting in the same study between the model and the actual practice (Clark, 2010; Karbo and Mutisi, 2008). Some authors who do not adopt a bottom-up, practice-based approach try to reduce the magical – with varying success – by incorporating secondary insights into the actual *gacaca* practice (Lahiri, 2009, Nagy, 2009; Sosnov, 2007–2008; Westberg, 2010). Some plainly curb the magic in the process of representing *gacaca* by stating that they are simply adopting a theoretical/normative perspective on the *gacaca* courts as a model (Haile, 2008).

In the meantime the *gacaca* courts continue to give rise to all kinds of studies. For example, with respect to the customary status of the modern *gacaca* courts (Haveman, 2011), donor support (Schotsmans, 2011) or the issue of sexual violence (Olwine, 2011). Many recent studies adopt a comparative perspective on the *gacaca* courts by situating them in the broader framework of all judicial responses to the Rwandan genocide (Apuuli, 2009; De Ycaza, 2010; Jones, 2010; Webster, 2011;

Westberg, 2010) or with other so-called customary approaches in other countries and cultures (Baker, 2007; Jones and Nestor, 2011). As a consequence, a representation of the *gacaca* courts will be used to explore topics of wider global interest and relevance (Drumbl, 2007; Fenrich et al, 2011; Huyse and Salter, 2008; Quinn, 2009; Shaw and Waldorf, 2010). This is a trend that will probably increase in the future since it is convenient to spur ongoing debates with 'known' examples or assess upcoming state schemes to be implemented with experiences from the past. Before doing so, as we have argued, it seems necessary to carefully unmask ideological or theoretical 'models'.

Notes

1. The English term 'reference reality' is based on the translation provided by Jean-Pierre Olivier de Sardan during a workshop at Roskilde University (Olivier de Sardan, n.d.).
2. *Urugwiro* refers to the location of the presidential office where the meetings took place.
3. *Gacaca* thus joins *imihigo* (performance contracts), *abunzi* (mediation committees), *ingando* and *itorero* (solidarity or re-education camps), *ubudehe* (community development planning) and *umuganda* (community work).
4. See for example the majority of the documents on the website of the National Service of the *Gacaca* Courts (SNJG) (http: //www.inkiko-gacaca.gov.rw/En/EnIntroduction.htm). Not only the website but also the actual communication of these state agents have similar characteristics. See for example the PowerPoint presentation entitled 'Le processus des juridictions *Gacaca* au Rwanda', made by the executive secretary of the National *Gacaca* Service, Domitilla Mukantaganzwa, during a conference on judicial reforms in Kigali on 18 June 2008 (Mukantaganzwa, 2008, on file with the author).
5. And the numeric does not necessarily have to be correct. For example, with respect to the *gacaca* courts' proceedings, many state actors refer to numbers ranging from 860,000 to 1.4 million 'persons' accused and processed through the *gacaca* system, while these numbers actually refer to 'cases'. One 'person' can be linked to multiple 'cases'.
6. The enumeration of these characteristics are based on the *ingando* manual (Republic of Rwanda, 2006b: 154–7).
7. Purdekova (2011: 34–7) also evokes the performative aspects of *ingando* camps but more their physical (setting and actions) than their psychological aspects (speech acts and the change of representations) as we do.
8. The songs referred to were recorded in the diary of a student attending an *ingando* for students in the second half of 2009.
9. Translated from the original:

   Aie aiehh Afande mpa silaha ya njye SMG,
   Umucengezi ndamubonye,
   Mubonye akororinga,mubonye mu rutoki,
   Afande mpa silaha ya njye SMG
   umucengezi ndamubonye.

10. The songs resemble the *ibyivugo*, the 'self-laudatory warlike poems' (de Lame, 2005: 489) from the pre-colonial era.

11. Translated from the original:

> *Murugamba sinzananirwa niba umwanzi atarava ku izima*
> *Dufatanye turwanye umwanzi*
> *Kumunesha ntibizatunanira.*

12. Translated from the original:

> *Nzahagarara ku nkike zawe*
> *Rwanda mpange amaso abaza bakugana*
> *Uwikoreye agaseke k'amahoro n'ubumwe n'ubwiyunge ,*
> *Nzamusekera mubise, naho uzana ibitaribyo nzamukumira mukure ku izima*
> *Rwanda Ndagukunda.*

13. The issue was earlier referred to in a British newspaper (Booth, 2010).
14. It seems an additional London based PR firm was paid by the Rwandan government to, among other things, denounce accusations of genocide crimes by Rwanda in the Democratic Republic of Congo (DRC), as an interview with a representative of the PR firm that was recorded with a hidden camera reveals (Newman and Wright, 2011).
15. See the reports on the website of Penal Reform International (http: //www.penalreform.org/publications/gacaca-research-reports), and the reports on the website of Avocats sans Frontières (http: //www.asf.be/fr/publications).
16. For concrete examples of these three strategies see Ingelaere (2010).
17. The *gacaca* practice was organized in two phases. After election of judges in 2002, the information-collection phase started in 2005 and 'officially' lasted until mid 2006. In mid 2006 the trial phase started. During the latter phase, actual hearings took place and verdicts were pronounced.

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